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10/034,072	12/28/2001	Michael Slutsky	1130	2236
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Himanshu S. Amin Amin & Turocy, LLP 24th Floor, National City Center 1900 East Ninth Street Cleveland, OH 44114			KIM, AHSHIK	
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BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

20

Application Number: 10/034,072

25 Filing Date: December 28, 2001

Appellant(s): SLUTSKY ET AL.

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Patricia Murphy
For Appellant

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EXAMINER'S ANSWER

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This is in response to the appeal brief filed on June 5, 2006 appealing from the Office action mailed November 29, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

5 **(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

10 **(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The Appellants' statement of the status of amendments after final rejection contained in
15 the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

20 **(6) Grounds of Rejection to be Reviewed on Appeal**

The Appellants' statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,058,304	Callaghan et al.	5-2000
6,109,528	Kunert et al.	8-2000
6,561,428	Meier et al.	5-2003

5 (9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

10 A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15 2. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Callaghan et al. (US 6,058,304, hereinafter “Callaghan”).

Re claim 1, Callaghan discloses a data entry system (see abstract) comprising a scanner head further comprising a laser light source and reflected light receiving means for decoding (col. 9, line 66 – col. 10, line 9); an ASIC circuitry 74, 150 (see figures, 3, 8-10 and 11) communicating with the scanning head 14 (col. 8, lines 36+; col. 14, lines 40+).

Re claim 2, as shown in figure 8, ASIC interfaces with laser scanner, touch screen 90, and optical interface 86. Laser scanner is a signal converted from reflected laser beam; optical interfaces uses optical signal (col. 8, lines 36+); and touch pad converts pressure into a signal. Therefore, the central processor 74 communicates with different types of data.

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Re claim 3, the portable data terminal is a barcode reader (col. 3, lines 47-55).

Re claim 4, the functionalities of ASIC includes power management (col. 14, line 53).

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Re claims 5-7, battery charging (life cycle) is informed to the user (col. 7, lines 15-22).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20 4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not 25 commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Callaghan et al. (US 6,058,304) in view of Kunert et al. (US 6,109,528, previously cited, 5 hereinafter “Kunert”).

The teachings of Callaghan have been discussed above.

Callaghan, however, fails to specifically teach or fairly suggest that the battery is Ni-MH battery.

Kunert teaches a portable electronic device 10 (see abstract) comprising an 10 imager device in the form of photo diode, a laser scanner (col. 13, lines 15+) and application specific integrated circuit (ASIC) (col. 12, lines 65+) which controls the majority of functions associated with a laser-based scanner. The micro controller implements a gas gauge function and recharging function (col. 18, lines 1+). Kunert further discloses that the device is further comprised of a Nickel-metal hydride type (col. 15 17, lines 17+) or lithium-ion type (col. 19, lines 15+).

In view of Kunert’s teaching, it would have been obvious to an ordinary skill in the art at the time the invention was made to use well known Ni-MH battery to the teachings of Callaghan in order to conserve power and reduce the frequency of charging. Ni-MH is a well-known battery type and used in wide variety of portable devices.

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Callaghan et al. (US 6,058,304) in view of Meier et al. (US 6,561,428, previously cited, 20 hereinafter “Meier”).

The teachings of Callaghan have been discussed above.

Callaghan fails to specifically teach or fairly suggest that the ASIC in the barcode reader further comprises IDE interface function.

Meier teaches an optical reader 10 reading image data (see abstract) comprising an ASIC circuitry (col. 5, lines 5, lines 46-52). The circuitry further includes memory devices including “Compact Flash” or MMC card (col. 5, line 53- col. 6, line 15), which means that the interfaces for the card would also be included. The micro controller implements a gas gauge function and recharging function (col. 18, lines 1+).

In view of Meier’s teaching, it would have been obvious to an ordinary skill in the art at the time the invention was made to incorporate well-known data storage mediums such as “CF” card or hard-disks to the teachings of Callaghan in order to increase storage capacity of the data terminal. As known, the barcode and other image data are becoming increasingly denser, carrying large amount of information. Accordingly, the reader apparatus have to have large memory area to capture and manipulate complex image data. Moreover, by providing permanent storage area, the image can be stored and transmitted to other device, and therefore an obvious expedient.

(10) Response to Argument

A. Responding to Appellants’ Argument against 35 U.S.C. 102 (b)

Appellant argues that Callahan does not claim each and every element of claims 1-7. Appellants states “in particular, independent claim 1 recites “an imager coupled to the portable electronic device and a laser scanner coupled to the portable electronic device.

Contrary to Appellants' assertions, it is the Examiner's view that Callaghan does disclose such portable terminal. Callaghan discloses a hand held data entry unit (see abstract; figure 3 or 9) comprising a light source and a reflected light sensor (col. 9, line 66 – col. 10, line 9). Processor 74, which is ASIC processor, interfaces with the scan head 14 (see figure 3). Granted 5 that they are integrated in the scan head 14, it is the Examiner's opinion that claim 1 is still anticipated by the portable terminal of Callaghan. Claim 1 recites

“A portable electronic terminal device comprising:
10 an imager coupled to the portable electronic device;
a laser scanner coupled to the portable device; and
with the imager and laser scanner.”

Callaghan discloses a portable electronic device comprising a laser scanner and imager “coupled to” the portable electronic device. Although Appellants argued, the claim 1, in the Examiner's view, does not clearly convey the subject matter Appellants argued in the remarks 15 section. Appellants further argues, “According to an aspect of the present invention, the ASIC 10 *interfaces with both an imager and a scanner* and routes *the data from the two devices* to the bar code reading terminal. 5. These sections of the specification and drawings clearly support the subject claim's recitation of two separate images based data capture devices, an imager and a laser scanner coupled to the terminal, each providing separate data captured from 20 each device to the ASIC.” However, it is the Examiner's position that claim 1 *does not clearly limit that they are separate and independent devices*. Even if they are separate devices, they

can be integrated as components parts of another device as shown in Callaghan. Claim 1 certainly does not preclude such embodiment.

Appellant also mentions, “Callaghan et al. does teach an optical interface that is employed to transmit output data to a printer or communicate with a base unit. However, this is 5 not an image capture device comparable to the imager as taught in the Appellants’ claimed invention.”

In response, the Examiner, in any of the prior office action(s), neither asserted nor suggested that the optical device was what Appellants claimed.

10 **B. Responding to Appellants’ Argument against 35 U.S.C. 103 (a)**

Appellants’ argument appears that examiner cited Kunert to cure the alleged deficiency of the Callaghan patent. As mentioned above, it is the Examiner’s position that claim 1 is anticipated by Callaghan. Kunert patent was cited for Ni-MH battery. In fact, no where in the argument under Callaghan in view of Kunert, Appellant mentions Ni-MH battery. It is the 15 Examiner’s view that Appellants argument is not pertinent to the rejection made over Callaghan in view of Kunert.

C. Responding to Appellants’ Argument against 35 U.S.C. 103 (a)

Appellants’ argument appears that examiner cited Meier to cure the alleged deficiency of 20 the Callaghan patent. As mentioned above, it is the Examiner’s position that claim 1 is anticipated by Callaghan. Meier patent was cited for IDE interface function. Again, no where in the argument under Callaghan in view of Meier, Appellant raises the issue of IDE interface

function. It is the Examiner's view that Appellants argument is not pertinent to the rejection made over Callaghan in view of Kunert.

With respect to the motivation to combine Callaghan, Kunert and Meier, the teachings cited from Kunert and Meier are common components of the barcode reader system – i.e., Ni-
5 MH battery and IDE interface. Appellants should have presented the argument as to why such combination would not have been obvious to one ordinary skill in the art.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

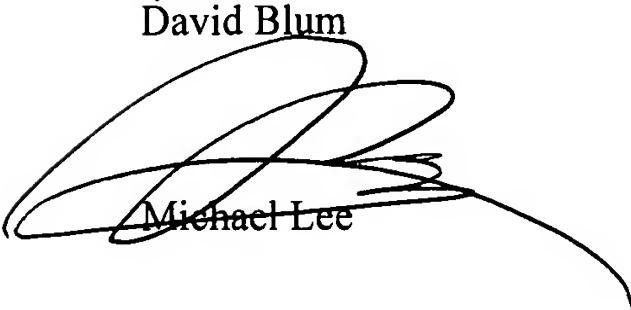
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September 5, 2006

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